ing from 30 to 90 per cent. alchol violates the law and may be enjoined from making such sales, though the sales are in quantities less than required to produce drunkenness.

The court said: "The evidence tends to show that Klein is the proprietor of a grocery business in Cherokee. It also tends to show that the Klein Grocery had an evil reputation as a place where intoxicants were unlawfully dispensed, that it was a place of resort for persons addicted to the use of intoxicants, and that drunken persons were frequently seen on or about the premises. Shortly before this action was begun the store was subjected to search under a warrant and considerable quantities of 'extracts' found. These extracts were of lemon, vanilla, and other flavoring substances, all containing a high percentage of alcohol. Defendant admits he had kept the extracts for sale and had sold more or less of them, and we think the record fairly supports the conclusion that they were sold and used as a beverage.

"Counsel for appellant argues that the extracts are not beverages, but legitimate food products, the sale of which is not prohibited. We think it quite immaterial that these articles are not made or intended for use as a beverage, if, as a matter of fact they are potable and contain alcohol in measurable proportions. The testimony shows that the alcoholic content of the extracts varied from 30 to 90 per cent. It is a matter of common knowledge that alcohol is an intoxicant, and it is not shown that the flavoring material makes the extract undrinkable. One witness does say that he does not see how a person could imbibe enough vanilla extract to become intoxicated because its tendency would be to make him sick before he drank enough to become drunk. But surely this is not the test. Alcohol is none the less alcohol because it is disguised by a foreign flavoring, and its sale is none the less unlawful because it is in quantities less than is required to produce drunkenness in the buyer."

Marriage—Annulment for Impotency—Doctrine of "Triennial Cohabitation".—In Tompkins *v.* Tompkins, 111 Atl. 577 the Court of Chancery of New Jersey held that if a wife be a virgin and apt after three years' cohabitation, the basband will be presumed to be impotent.

The court said: "This petition is for annulment of marriage on the ground of incurable impotency. The couple, young persons, have cohabited for five years, and the wife is still a virgin. She is physically and mentally normal and capable of copulating. Her virginity and aptness are established beyond question by three physicians who examined her recently. She testified that her husband never tried to function, that he made no effort at penetration, and that the extent of his performances was to lie upon her, with parts limpid be-

tween her thighs, and agitate. He vigorously protested his virility, but admitted the nonconsummation of the marriage, and also that he sought gratification in external attrition as his wife described because, as he says, his efforts at sexual intercourse were painful and distressing to her. He submitted to an examination by one of his wife's physicians, who testified that he was structurally a male, normal in the parts, and to all appearances capable of coition. In build, carriage, voice, and deportment, as I observed him in court, he appeared to be up to the standard.

"If there is genital impairment, it is latent and scientifically undiscoverable; or the lapse may be due to a psychosis, well recognized by the medical science, and discussed in some of the divorce cases in England—a mental condition rendering him physically impotent as to his wife, though potent as to all other women. Were it necessary for the judgment to pronounce the cause of impotency, I would not be unwilling to ascribe the impasse between this couple to this peculiar phenomenon. In N——r *v.* M——e, 2 Robertson, Ecc. 625, Dr. Lushington annulled a marriage on the report of inspectors that the husband was impotent as regards his wife, and held, in effect, that the law was not concerned further than this, observing that impotency quoad hoc was as prejudicial to the wife as universal impotency.

"In approaching a decision of the issue raised by the pleadings—the impotency of the husband, which is bitterly controverted by sharply conflicting and recriminating testimony—I shall apply the rule of the English courts taken from the civil law as modified by Justinian, called the doctrine of triennial cohabitation. The essence of that doctrine is that, if the wife be a virgin and apt after three years' cohatitation, the husband will be presumed to be impotent, and the burden will be upon him to overcome the presumption by proof that he is not at fault. It is applied as a hard and fast rule in England. Lewis *v.* Hayward, 35 L. J. (N. S.) Prob. M. & D., 105; G——— *v.* M———, 10 App. Cas. 171; C——— *v.* C———, 29 L. J. 81 (N. S.); S——— *v.* A———, 3 Prob. Div. 72; F——— *v.* P———, 75, L. T. 198; Marshall *v.* Hamilton, 3 Swabey & Tristram, 517; G——— *v.* G———, L. R. 2 Prob. Div. 287; F——— *v.* F———, 34 L. J. (N. S.) Prob. & M. 66; Welde *v.* Welde, 2 Lee, Ecc. 580; Countess of Essex Cases, 2 How. St. Tr. 786; Sparrow *v.* Harrison, 3 Curteis, Ecc. 16; Anonymous, 2 Robertson, Ecc. 625; S——— *v.* E———, 3 Swabey & Tristram, 240; G——— *v.* S———, 1 Spinks, Ecc. 389; A——— *v.* B———, 1 Spinks, Ecc. 12. Mr. Bishop devotes a subchapter to the rule. Bishop, M., D. & S. vol. 2, 496.

"I do not find countenance given to the doctrine in any of the reported cases in this country, but I can conceive no good reason why it should not be introduced into our jurisprudence as a rule of law in the decision of these vexed questions of fact, to which, usually, the

parties alone bear witness, each blaming the other. The doctrine is logical and sound in principle, and helpful and convenient in the proper administration of justice. It appeals to one's sense of justice, for it would seem but fair that after three years' probation a husband ought to be made to account for his dereliction to his disappointed and complaining spouse. The period is none too short. Whatever may have been the cause in the past for not giving expression to the rule (perhaps it was due to an early impression of the bench and bar that the Court of Chancery was without inherent jurisdiction to annul a marriage for impotency, notwithstanding the obviousness of the fraud, because its English prototype had not exercised it, a view voiced in Anonymous, 24 N. J. Eq. 19; in later cases there have been annulments for various kinds of fraud, some less serious in their consequences than impotency [Carris *v.* Carris, 24 N. J. Eq. 516; Crane *v.* Crane, 62 N. J. Eq. 21, 49 Atl. 734; Davis *v.* Davis, 90 N. J. Eq. 158, 106 Atl. 644; Bolmer *v.* Edsall, 90 N. J. Eq. 299, 106 Atl. 646; Ysern *v.* Horter, 110 Atl. 31]), there is no valid reason for not adopting it as a part of our common law, since the Legislature has added to the domestic relation jurisdiction of the Court of Chancery incurable impotency as a cause for annulment. While novel and an innovation in our practice, there is no reason why the rule should not have a place in our judicial system, there to subserve the administration of the law as it has for ages under a system which we inherited.

"The burden then being shifted to the husband to excuse or justify the plight of his wife, the question comes to one of belief in his story of forbearance for five years, under most trying circumstances, simply because sexual intercourse was painful and distressing to her I have misgivings. Such solicitude of a groom is noble, of a husband, heroic. Few have the fortitude to resist the temptations of the honeymoon. But human endurance has its limitations. When nature demands its due, youth is prodigal in the payment. Men are still cave men in the pleasures of the bed. The weaker sex may be more temperate, but none the less passionate, and heedless of the penalty. They do not shirk the initiation nor shrink from the consequences. The husband's plea does not inspire confidence. Common experience discredits it. And if, in fact, he had the physical power, and refrained from sexual intercourse during the five years he occupied the same bed with his wife, purely out of sympathy for her feelings, he deserves to be doubted for not having asserted his rights, even though she balked.

"The presumption of impotency has not been overcome, and a decree of nullity will be advised."

Privileged Communications—Disclosure by Physician of Information as to Contagious Veneral Disease.—In Simonsen *v.* Swenson, 177 N. W. 831, the Supreme Court of Nebraska held that a physician is